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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/603,255	06/23/2000	Grover John Manderfield JR.	P00.0677	1215

26263 7590 05/21/2002

SONNENSCHN NATH & ROSENTHAL
P.O. BOX 061080
WACKER DRIVE STATION
CHICAGO, IL 60606-1080

EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 05/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/603,255

Applicant(s)

MANDERFIELD ET AL.

Examiner

Niki M. Eloshway

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 11-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 21-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Claims 11-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 3.
2. Applicant's election without traverse of Group I, the container, in Paper No. 3 is acknowledged.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-6 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Zettle (U.S. 5,900,293). Zettle teaches a blow molded bowl, shown in figure 2 (see col. 4 lines 54-57). The lower frustum section is element 26, and the upper frustum section is element 24. The lid is element 21. The threads 20 show that the lid is rotatably secured to the bowl. The skirt of the lid 21 is considered the lower lip and it is received in the recess formed above wall section 22 at 12. In col. 3 lines 24-43, Zettle teaches that the bowl is made of polypropylene.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3727

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zettle in view of Randall (U.S. 5,996,882). Zettle discloses the claimed invention except for the container being made of a multi-layer plastic. Randall teaches that it is known to make a container of a multi-layer plastic (see col. 10 lines 43-55). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Zettle made from the multi-layer structure taught by Randall, in order to give the container a desired flexibility while not compromising the effective sealing qualities of the container.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zettle in view of Fortuna (U.S. D279,550). Zettle discloses the claimed invention except for the container having a diameter greater than the height. Fortuna teaches that it is known to provide a container with a diameter greater than the height. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Zettle with an increased diameter, as taught by Fortuna, in order to increase the capacity of the container and provide the container with increased stability.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zettle in view of Edwards (U.S. D270,814). Zettle discloses the claimed invention except for the standing ridge. Edwards teaches that it is known to provide a container standing ridge (see figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Zettle with a standing ridge, as taught by Edwards, in order to support the bottom wall of the container above the supporting surface.

Art Unit: 3727

9. Claims 21, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zettle in view of Cistone et al. (U.S. 5,865,345). Zettle discloses the claimed invention except for the oxygen barrier layer. Cistone et al. teach that it is known to provide a container with an oxygen barrier layer (see col. 1 line 60 to col. 2 line 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Zettle with an oxygen barrier layer, as taught by Cistone et al., in order to better protect the contents of the container.

10. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zettle in view of Cistone et al. and Fortuna. Zettle discloses the claimed invention except for the oxygen barrier layer and except for the container having a diameter greater than the height. Cistone et al. teach that it is known to provide a container with an oxygen barrier layer (see col. 1 line 60 to col. 2 line 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Zettle with an oxygen barrier layer, as taught by Cistone et al., in order to better protect the contents of the container.

Fortuna teaches that it is known to provide a container with a diameter greater than the height. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Zettle with an increased diameter, as taught by Fortuna, in order to increase the capacity of the container and provide the container with increased stability.

Response to Arguments

11. Applicant's arguments filed February 11, 2002 have been fully considered but they are not persuasive. Applicant argues that Zettle is "entirely not suitable for hot fill or retort processes". Claim 1 sets forth that "the container being constructed such that it is capable of resisting permanent deformation when used in a hot fill or retort process." The Zettle container is capable of resisting a

Art Unit: 3727

certain amount of pressure, as stated in col. 2 lines 12-27. In addition, the collapsibility of the Zettle container enables it to resist permanent deformation.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

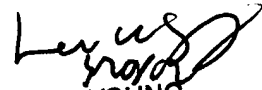
13. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into group 3720 will be promptly forwarded to the examiner.

Art Unit: 3727

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. The examiner is in the office on Tuesdays and Fridays. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Customer Service Office at (703) 306-5648.



Niki M. Eloshway/nme
Patent Examiner
May 17, 2002



LEE YOUNG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700